

ATTACHMENT B

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff
Investment Securities LLC,

Plaintiff,

v.

ESTATE OF SEYMOUR EPSTEIN, MURIEL EPSTEIN, as beneficiary
and of the Estate of Seymour Epstein and/or the Trusts created by the Last
Will and Testament of Seymour Epstein, as Executor of the Estate of
Seymour Epstein, and as trustee of Trusts created by the Last Will and
Testament of Seymour Epstein, HERBERT C. KANTOR, as trustee of
Trusts created by the Last Will and Testament of Seymour Epstein, RANDY
EPSTEIN AUSTIN, as beneficiary of the Estate of Seymour Epstein and/or
the Trusts created by the Last Will and Testament of Seymour Epstein,
ROBERT EPSTEIN, as beneficiary of the Estate of Seymour Epstein and/or
the Trusts created by the Last Will and Testament of Seymour Epstein,
JANE EPSTEIN, as beneficiary of the Estate of Seymour Epstein and/or the
Trusts created by the Last Will and Testament of Seymour Epstein, SUSAN
EPSTEIN GROSS, as beneficiary of the Estate of Seymour Epstein and/or
the Trusts created by the Last Will and Testament of Seymour Epstein, and
SHELBURNE SHIRT COMPANY, INC.,

Defendants.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 10-04438 (SMB)

**EXPERT REPORT OF
MATTHEW B. GREENBLATT, CPA/CFF, CFE
SENIOR MANAGING DIRECTOR
FTI CONSULTING, INC.**

**PRINCIPAL BALANCE CALCULATION
AS APPLIED TO
THE EPSTEIN DEFENDANTS**

June 28, 2019

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I. INTRODUCTION

1. As described in my Expert Report regarding the Methodology for the Principal Balance Calculation dated November 15, 2012 (the “Principal Balance Calculation Report”), FTI Consulting, Inc. (“FTI”) was retained by Baker & Hostetler LLP, on behalf of the Trustee, to, among other things, reconstruct the books and records of BLMIS. I am a Senior Managing Director at FTI. Additional information regarding my professional experience and recent testimony is included in my Curriculum Vitae annexed hereto as **Exhibit 1**.

2. As part of FTI’s reconstruction of the books and records of BLMIS, chronological listings of all cash and principal transactions for every BLMIS customer account were compiled. These chronological listings provided the foundation to calculate every BLMIS account holder’s principal balance on a daily basis for all dates from April 1, 1981 through December 11, 2008 (the “Principal Balance Calculation”).

3. The Principal Balance Calculation Report explains the methodology of the Principal Balance Calculation and describes the relevant documents and data that were maintained by BLMIS. Accordingly, this report should be read in conjunction with the Principal Balance Calculation Report.¹

4. This report specifically applies the methodology of the Principal Balance Calculation to the BLMIS accounts associated with the Estate of Seymour Epstein, Muriel Epstein, Herbert C. Kantor (deceased), and Shelburne Shirt Company, Inc. (collectively, the “Defendants”),² in the above-captioned litigation, and provides a description of the cash and principal activity in the BLMIS accounts impacting the Principal Balance Calculation for BLMIS

¹ The opinions that I render in the Principal Balance Calculation Report, the documents that I considered in connection with that Report, and the accompanying Exhibits to that Report, are all incorporated by reference. All capitalized terms not defined herein shall have the meaning ascribed to them in the Principal Balance Calculation Report.

² Pursuant to court order, the count(s) seeking to recover subsequent transfers from Muriel Epstein, Randy Epstein Austin, Robert Epstein, Jane Epstein, and Susan Epstein Gross were dismissed without prejudice. *See* Order Granting in Part and Denying in Part Defendants’ Motions to Dismiss, dated July 16, 2015, Adv. No. 10-04438 (SMB), ECF No. 42.

Account 1CM049 (the “Epstein Account 1CM049”) and BLMIS Account 1CM005 (the “Epstein Account 1CM005”)³ (collectively, the “Epstein Accounts”).

5. This report has been prepared in connection with the above-captioned litigation and is to be used only for the specific purposes of this lawsuit. It is not to be used for any other purpose without the express written consent of FTI. If called upon to testify in this matter, I intend to provide testimony regarding my analyses and conclusions consistent with this report. FTI is being compensated at a rate of \$670 per hour for my professional time incurred in performing the work necessary to prepare this report. FTI’s fees are not contingent on the conclusions reached in this report or the outcome of the above-captioned litigation.

6. The documents and data that I considered in connection with this report are listed in **Exhibit 2**. I reserve the right to supplement my report based on any additional documents or information received.

II. DESCRIPTION OF ACTIVITY IN EPSTEIN ACCOUNT 1CM049 AND THE TRANSACTIONS IMPACTING THE PRINCIPAL BALANCE CALCULATION

7. Epstein Account 1CM049 was opened with BLMIS in January 1993. Throughout its account history, Epstein Account 1CM049 had a total of 15 cash withdrawal transactions. In addition to these cash transactions, there was one inter-account transfer from BLMIS Account 1C0061 into Epstein Account 1CM049.

8. The cash withdrawal transactions, as well as the inter-account transfer, all impacted the Principal Balance Calculation for Epstein Account 1CM049. Each of these transactions was reflected on the Customer Statements between January 1993 and November 2008.

9. As described in the Principal Balance Calculation Report, the amount of the funds transferred from one BLMIS account to another BLMIS account (an inter-account

³ The name on Epstein Account 1CM005 changed over the years it was maintained with BLMIS. Prior to February 1993, the account was under the name of “SHELBURNE SHIRT C/O SEYMOUR EPSTEIN.” From February 1993 through February 2002, the account was under the name of “SHELBURNE SHIRT C/O BUCHBINDER TUNICK & CO.” From March 2002, the account was under the name of “SHELBURNE SHIRT C/O SEYMOUR EPSTEIN.” (See **AMF00240565**, **MF00436122**, **MF00430720**, and **MDPTPP00584856-MDPTPP00584868**.)

transfer⁴) is limited to the amount of principal available in the *transferor's* account at the time of the transfer. Only the portion of the inter-account transfers between BLMIS accounts for which the transferor had actual principal could be transferred. As such, all inter-account transfers have been analyzed and the transferee's account has been credited only up to the amount of principal available in the transferor's account on the day of the inter-account transfer.

10. Thus, in order to perform the Principal Balance Calculation for Epstein Account 1CM049, BLMIS Account 1C0061 was analyzed to determine the amount of principal available in that account that could be transferred into Epstein Account 1CM049.

11. **Exhibit 3A** to this report (Summary Schedule of Cash and Principal Activity in Epstein Account 1CM049) provides a summary of the activity in the BLMIS accounts that impacted the Principal Balance Calculation for Epstein Account 1CM049.

12. **Exhibits 4A and 4B** to this report provide detailed schedules for the Principal Balance Calculation for BLMIS Account 1C0061 and Epstein Account 1CM049, respectively.

A. Description of the Inter-Account Transfer From BLMIS Account 1C0061 Into Epstein Account 1CM049

13. Epstein Account 1CM049 was opened with an inter-account transfer from BLMIS Account 1C0061. In this instance, the transferor account, BLMIS Account 1C0061, was a pooled account where Madoff commingled the funds of certain investors into one BLMIS customer account. As described more fully in the Principal Balance Calculation Report, prior to 1993, Madoff commingled the funds of a limited number of individuals into several pooled accounts. FTI performed further investigation and analysis to calculate the principal attributable to each account on a customer-by-customer basis consistent with the BLMIS documents and/or the Trustee's counsel's determination. (See Principal Balance Calculation Report, ¶28 n.9.) As reflected on the Customer Statements, on January 4, 1993, Epstein Account 1CM049 was opened with an inter-account transfer from BLMIS Account 1C0061—a pooled account—in the amount of \$329,987.

⁴ An inter-account transfer is defined as a non-cash transaction between BLMIS customer accounts in which no new funds entered or left BLMIS, but rather a book entry occurred at BLMIS to internally adjust the balances of those accounts. These book entries did not reflect any transfers of cash because there was no actual movement of cash. Rather, these inter-account transfers merely changed reported value in the purported "equity" maintained in the BLMIS customers' accounts. (See Principal Balance Calculation Report, ¶¶17, 27-28, 32-34.)

14. Based upon available information, however, Epstein Account 1CM049 was credited with \$200,000 of principal from this inter-account transfer on January 4, 1993. The Cohmad Cash Database identified the amount of \$200,006 credited to Epstein Account 1CM049. The Cohmad Cash Database was a database that monitored the amounts deposited and withdrawn by certain investors who were referred to BLMIS by employees of Cohmad Securities Corporation. (See **Exhibit 6** for an excerpt of the Cohmad Cash Database for Epstein Account 1CM049.) Documents produced to the Trustee by the Defendants, however, confirmed that only a principal amount of \$200,000 was deposited by the Defendants into Epstein Account 1CM049. Specifically, Defendants provided documents that confirmed three deposits totaling \$200,000:

- A copy of the check sent by the Defendants in the amount of \$100,000 dated October 2, 1989 and a corresponding letter dated October 3, 1989 confirming the Defendants' deposit of \$100,000;
- An April 14, 1991 letter confirming the Defendants' deposit of \$50,000; and
- An October 2, 1991 letter confirming the Defendants' deposit of an additional \$50,000.⁵

15. Therefore, the amount included in the Principal Balance Calculation as principal transferred out of BLMIS Account 1C0061 and into Epstein Account 1CM049 was limited to the available principal amount of \$200,000. (See **Exhibits 3A, Exhibit 4A** for the Detailed Schedule for the Principal Balance Calculation for BLMIS Account 1C0061; *see also* **Exhibit 4B** for the Detailed Schedule for the Principal Balance Calculation for Epstein Account 1CM049.)

B. Description of the Cash Withdrawals Out of Epstein Account 1CM049

16. Between January 4, 1993 and December 11, 2008, Epstein Account 1CM049 reflected a total of 15 cash withdrawals⁶ totaling \$1,861,538.

17. The Principal Balance Calculation for Epstein Account 1CM049 demonstrates that between January 4, 1993 and December 11, 2008, \$1,861,538 was withdrawn from BLMIS, which consisted of \$200,000 of principal and an additional \$1,661,538 of funds withdrawn in

⁵ See **10-04438_Epstein_0000009-10-04438_Epstein_0000012**.

⁶ These cash withdrawals exclude the line items on the Customer Statement related to a check for \$125,000 issued by BLMIS on June 13, 2007, which was stopped on June 28, 2007. (See **Exhibit 4B**.)

excess of principal, representing fictitious profits. Within the two-year period prior to December 11, 2008, \$1,110,538 of fictitious profits was withdrawn from Epstein Account 1CM049. (See **Exhibit 4B.**)

III. DESCRIPTION OF ACTIVITY IN EPSTEIN ACCOUNT 1CM005 AND THE TRANSACTIONS IMPACTING THE PRINCIPAL BALANCE CALCULATION

18. Epstein Account 1CM005 was opened with BLMIS in January 1993. Throughout its account history, Epstein Account 1CM005 had a total of eight cash deposit and withdrawal transactions.

19. The cash deposit and withdrawal transactions all impacted the Principal Balance Calculation for Epstein Account 1CM005. Each of these transactions was reflected on the Customer Statements between January 1993 and November 2008.

20. **Exhibit 3B** to this report (Summary Schedule of Cash and Principal Activity in Epstein Account 1CM005) provides a summary of the activity in Epstein Account 1CM005.

21. **Exhibit 5** to this report provides a Detailed Schedule for the Principal Balance Calculation for Epstein Account 1CM005.

A. Description of the Cash Deposits Into Epstein Account 1CM005

22. On January 4, 1993, Epstein Account 1CM005 was opened with a cash deposit via check in the amount of \$100,000, all representing principal.

23. Subsequent to this initial cash deposit, there were two additional cash deposits via checks into Epstein Account 1CM005 in the aggregate amount of \$200,000, all representing principal.

24. In sum, these three cash deposits provided Epstein Account 1CM005 with a total of \$300,000 of principal. (See **Exhibit 3B.**)

B. Description of the Cash Withdrawals Out of Epstein Account 1CM005

25. Between January 4, 1993 and December 11, 2008, Epstein Account 1CM005 reflected a total of five cash withdrawals totaling \$1,876,900.

26. The Principal Balance Calculation for Epstein Account 1CM005 demonstrates that between January 4, 1993 and December 11, 2008, \$1,876,900 was withdrawn from BLMIS, which consisted of \$300,000 of principal and an additional \$1,576,900 of funds withdrawn in

excess of principal, representing fictitious profits. Within the two-year period prior to December 11, 2008, \$1,511,900 of fictitious profits was withdrawn from Epstein Account 1CM005. (See **Exhibit 5** for the Detailed Schedule for the Principal Balance Calculation for Epstein Account 1CM005.)

IV. SIGNATURE AND RIGHT TO MODIFY

27. This report and the exhibits contained herein present my findings and the bases thereof. To the extent that any additional information is produced by any party, I reserve the right to incorporate such additional information into my report or to modify my report as necessary.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matthew B. Greenblatt", is written over a horizontal line.

Matthew B. Greenblatt, CPA/CFF, CFE
Senior Managing Director
FTI Consulting, Inc.

Dated: June 28, 2019

V. LIST OF EXHIBITS

Exhibit 1 – Curriculum Vitae and Testimony of Matthew B. Greenblatt

Exhibit 2 – Documents Considered

Exhibit 3A – Summary Schedule of Cash and Principal Activity in Epstein Account 1CM049

Exhibit 3B – Summary Schedule of Cash and Principal Activity in Epstein Account 1CM005

Exhibit 4A – Detailed Schedule for the Principal Balance Calculation for BLMIS Account
1C0061

Exhibit 4B – Detailed Schedule for the Principal Balance Calculation for Epstein Account
1CM049

Exhibit 5 – Detailed Schedule for the Principal Balance Calculation for Epstein Account
1CM005

Exhibit 6 – Excerpt of the Cohmad Cash Database for Epstein Account 1CM049